

NEWSLETTER
April 2011

LEGEA NR. 53/2003 – CODUL MUNCII

Astfel cum am precizat in Newsletter-ul din luna martie, in continuare vom prezenta principalele modificari si completarii aduse de Legea nr. 40/2011 Codului Muncii, cu privire la: (i) Contractul individual de munca pe durata determinata; (ii) Timpul de munca, (iii) Formarea profesionala si (iv) Raspunderea juridica.

1) Contractul individual de munca pe durata determinata

Conform noilor prevederi legale, intre aceleasi parti se pot incheia succesiv cel mult 3 contracte individuale de munca pe durata determinata (vechea reglementare prevedea un termen de 24 de luni pentru incheierea acestor contracte). Mai mult, noua reglementare prevede ca, in cazul in care se incheie contracte individuale de munca pe durata determinata succesive, acestea nu pot avea o durata mai mare de 12 luni fiecare, durata care nu era prevazuta in reglementarea anterioara.

Noul Cod al Muncii prevede ca, in cazul contractului de munca pe durata determinata, acesta nu poate fi incheiat pe o perioada mai mare de 36 de luni (anterior, perioada maxima prevazuta de lege era de 24 de luni).

O alta modificare importanta a Codului Muncii consta in abrogarea dispozitiilor conform carora, la incetarea celui de-al treilea contract individual de munca pe durata determinata, conform celor mentionate mai sus, sau la expirarea perioadei pe care poate fi incheiat contractul individual de munca pe durata determinata, daca pe postul respectiv va fi angajat un alt salariat, acesta va fi angajat cu contract individual de

LAW NO. 53/2003 – LABOUR CODE

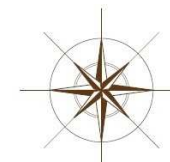
As we also stated in the March Newsletter, we will present the main changes and additions brought by the Law no. 40/2011 of the Labour Code regarding: (i) the individual labour contract for a determined duration; (ii) the working time; (iii) Professional training and (iv) Legal liability.

1) Individual labour contract for a determined duration

Under the new provisions, between the same parties, maximum three successive individual labour contracts for a determined duration can be concluded (in the old regulation it was required a period of 24 months to conclude such contracts). Moreover, the new regulation provides that, when successive individual labour contracts for a determined period are concluded, they shall not have duration longer than 12 months each, duration that was not mentioned in the previous regulation.

The new Labour Code provides that the labour contract for a determined duration cannot be concluded for a period exceeding 36 months (previously, the maximum period prescribed by law was 24 months).

Another important change of the new Labour Code is the repeal of the provisions according to which, at the termination of the third individual contract for a determined period, as stated above, or at the expiry of the individual labour contract for a determined duration, if for that job will be hired an employee, the latter will be hired with an individual labour contract of undetermined duration. Thus, the new



munca pe durata nedeterminata. Astfel, noua reglementare da posibilitatea angajatorului ca, in situatiile mentionate anterior, sa incheie fie un contract individual de munca pe durata nedeterminata, fie unul pe durata determinata.

2) Timpul de munca

A) Durata timpului de munca

Conform prevederilor legale, pentru salariatii angajati cu norma intreaga durata normala a timpului de munca este de 8 ore pe zi si de 40 de ore pe saptamana. Noua reglementare prevede ca, prin exceptie, durata timpului de munca, ce include si orele suplimentare, poate fi prelungita peste 48 de ore pe saptamana, cu conditia ca media orelor de munca, calculata pe o perioada de referinta de 4 luni calendaristice, sa nu depaseasca 48 de ore pe saptamana (in reglementarea anterioara, media orelor de munca se calcula pe o perioada de referinta de 3 luni calendaristice).

B) Munca suplimentara

Compensarea muncii suplimentare, conform noilor prevederi, se realizeaza prin acordarea de ore libere platite in urmatoarele 60 de zile calendaristice dupa efectuarea acestora (reglementarea anterioara prevedea o perioada de 30 de zile). Mai mult, conform noului Cod al Muncii, in perioadele de reducere a activitatii angajatorul are posibilitatea de a acorda zile libere platite din care pot fi compensate orele suplimentare ce vor fi prestate in urmatoarele 12 luni.

3) Formarea profesionala

In situatia in care salariatii au participat la cursuri sau stagii de formare profesionala initiate de angajator, toate cheltuielile ocazionate de aceasta participare fiind suportate de acesta din urma, salariatii nu pot avea initiativa incetarii contractului individual de munca pentru o perioada stabilita prin act aditional.

regulation enables the employer, in the situations mentioned above, to conclude either an individual labour contract for a determined duration or a labour contract for an undetermined duration.

2) Working time

A) The duration of the working time

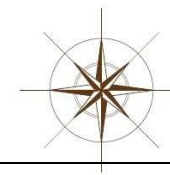
According to the legal provisions, for the employees employed full time the normal working time duration is 8 hours a day. The new regulation requires that, by exception, the working time duration, which includes also overtime, may be extended beyond 48 hours per week, provided that the average working hours, calculated over a reference period of four months, may not exceed 48 hours per week (in the previous regulation, the average working hours were calculated over a reference period of 3 months).

B) Overtime

Under the new provisions, overtime compensation is achieved by providing paid time off in the next 60 days that follow the overtime (the old regulation provided a period of 30 days). Moreover, according to the new Labour Code, in activity reduction periods, the employer may provide paid time off from which the overtime made in the following 12 months can be compensated.

3) Professional training

If the employees have attended training courses or professional workshops initiated by the employer, all costs of this participation being supported by the latter, the employees cannot decide the termination of the individual labour contract for a period of time determined by an



<p>4) <u>Raspunderea juridica</u></p> <p>Cu privire la sanctiunea disciplinara aplicata de catre angajator salariatului potrivit legii, in cazul in care salariatul savarseste o abatere disciplinara, potrivit noii reglementari, aceasta se radiaza de drept in termen de 12 luni de la aplicare, daca salariatului nu i se aplica o noua sanctiune disciplinara in acest termen. Radierea sanctiunilor disciplinare se constata prin decizie a angajatorului emisa in forma scrisa.</p> <p>Mai mult, noul Cod al Muncii, nu mai prevede ca sanctiune disciplinara suspendarea contractului individual de munca pentru o perioada de maximum 10 zile lucratoare.</p> <p>Referitor la raspunderea patrimoniala, conform noilor prevederi, in situatia in care angajatorul constata ca salariatul sau a provocat o paguba din vina si in legatura cu munca sa, va putea solicita salariatului, printr-o nota de constatare si evaluare a pagubei, recuperarea contravalorii acesteia, prin acordul partilor, intr-un termen care nu va putea fi mai mic de 30 de zile de la data comunicarii.</p> <p>Contravaloarea pagubei recuperate prin acordul partilor, conform celor mentionate mai sus, nu poate fi mai mare decat echivalentul a 5 salarii minime brute pe economie.</p>	<p>additional deed.</p> <p>4) <u>Legal liability</u></p> <p>Regarding the disciplinary sanction applied by the employer to the employee according to the law, if the employee commits a disciplinary violation, according to the new regulation, this violation is deleted within 12 months from its implementation, if the employee does not receive a new punishment in this period. The deletion of the disciplinary sanction is established by the decision of the employer issued in a written form.</p> <p>Moreover, the new Labour Code no longer provides as a disciplinary sanction the suspension of the individual labour contract for a period of maximum 10 working days.</p> <p>Regarding the patrimonial liability, according to the new provisions, if the employer finds that the employee caused a loss by his fault and in connection with his work, he may request, by a note of assessment of damages, the recovery of its value, by agreement of the parties, within a period of minimum 30 days from the date of its communication.</p> <p>The equivalent value of the damage recovered by parties' agreement, as mentioned above, cannot exceed the equivalent of 5 minimum salaries per economy.</p>
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